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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09:728,267	12/01/2000	Brant Patrick	2000U039.US	3835

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EXAMINER

BROWN, JENNINE M

ART UNIT	PAPER NUMBER
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1755

8

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/728,267

Applicant(s)

PATRICK ET AL.

Examiner

Jennine M. Brown

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 11-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5. 6) ☐ Other:

DETAILED ACTION

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to A Catalyst Composition, classified in class 502, subclass 117.
- II. Claims 11-23, drawn to Continuous Olefin Polymerization Process in a Reactor, classified in class 526, subclass 160.
- III. Claims 24-29, drawn to Method for Controlling Static Charges in a Polymerization Reactor, classified in class 526, subclass 72.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process claimed can be practiced with another materially different product because a different type of anionic and cationic co catalyst could be used with a separate type of catalyst. The catalyst and co catalyst claimed in Group I is not used for olefin polymerization but could be used for ring opening metathesis or other disparate process, whereas the process in Group II is used for olefin polymerization.

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process claimed can be practiced with another materially different product because a different type of anionic and cationic co catalyst could be used with a separate type of catalyst. The co catalyst claimed in Group I is not used for controlling static charges but aiding in the activity of the polymer, whereas the process in Group II is used for controlling static charges in a reactor.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Lisa Kimes Jones on 06/08/2001 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

Claims 1-10 are objected to because of the following informalities: In claims 2-3, X is generally used in scientific literature to denote halogenated elements, Y is generally used to denote the element Yttrium. Examiner suggests replacing X and Y with more appropriate labels that are less likely to be confused with conventionally accepted symbols. In all claims, superscripts and subscripts should be labeled as such so that R_n does not get confused with Rn (e.g. radon). Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 10 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 5 and 10 recite the limitation "static charge modifier" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 1 does not refer to a static charge modifier. Appropriate correction is required. Claim 2 recites the limitation "the anion $[C]^+$ " in line 1. There is insufficient antecedent basis for this limitation in the claim. Examiner assumes this was supposed to be the cation $[C]^+$ because the limitation in claim 2 is repugnant to that of claim 1. Appropriate correction is required.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. When claiming "or other reactive group" in line 3, Applicants have not limited the scope of what said reactive group could mean therefore this limitation has no metes or bounds.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Agarwal, et al. (US 6512019).

Agarwal, et al. teach a metallocene type catalyst composition modifier having the formula $[C]^+ [A]^-$ wherein the cation does not have an active hydrogen where $[A]^-$ is a

weakly conducting metal or metalloid anion. Tri(n-butyl) ammonium tetrakis(pentafluorophenyl)borate is the preferred cationic/anionic compound (see column 7, lines 10-20). The cation from this compound has its main cation from Group 15 in the Periodic Table and more than one aliphatic group attached. The anion from this compound has boron as its metalloid and more than one halohydrocarbyl group attached. (col. 7, l. 10-20, 31-60) Agarwal, et al. further teach the catalyst comprises a carrier which can be an inorganic oxide and the activator is alumoxane (col. 6, l. 51 – col. 7, l. 9; col. 8, l. 26-55).

Claim10 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Agarwal, et al. (US 6512019).

Agarwal, et al. teach a metallocene type catalyst composition as described above and teach that the metallocenes, activator (which includes the static charge modifier) and support may be combined in any number of ways (col. 8, l. 56-57) but do not specifically teach the weight percent based on total polymerization catalyst weight is present in an amount ranging from 0.5 to 500 weight percent. This would mean that there would be almost no static charge modifier in the catalyst to near equivalent amounts of static charge modifier to support materials.

Since the prior art appears to describe and teach the invention as claimed on the basis of inherent property characteristics which either anticipate or render the claimed product obvious, an alternative 35 U.S.C. 102/103 rejection is deemed appropriate, and


the burden of proof that it does or does not shifts to the applicants as in *In re Best*, 195 USPQ 430, 433 (CCPA 1877).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennine M. Brown whose telephone number is (703) 305-0435. The examiner can normally be reached on M-F 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on (703) 308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 879-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

jmb
March 21, 2003


Mark L. Bell
Supervisory Patent Examiner
Technology Center 1700